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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER

HECKERT, JASON MARK

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1711

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/589,053
Filing Date: April 04, 2007
Appellant(s): SCHESSL ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/27/10 appealing from the Office action mailed 4/7/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 9-28 are pending.

Claims 9-28 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

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subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,918,749	Pille et al.	6-1999
4,927,033	Patera et al.	5-1990
3,289,854	Kauffman	12-1966

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-11 rejected under 35 U.S.C. 102(b) as being anticipated by Kauffman.

Kauffman teaches a fixing device comprising a first section 25 that can be coupled to a vertical section of a crockery basket and a second section 24 extending substantially vertically forming a curve. The device can be removable or integrated (col 2 lines 45-55). Specifically, Kauffman states that the device can be welded to the vertical element. If welded and permanently fixed, the device would be substantially non-rotating. The second portion can be elastically deformed manually. The first area can be construed

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as a connecting region having at least one receiving area suitable for fixing to a vertical basket. The device is capable of being attached to a cutlery basket.

Claims 9-11, 14, 18 rejected under 35 U.S.C. 102(b) as being anticipated by Pille. Pille discloses a fixing device comprising a first section attached to a vertical portion of a crockery basket (items 44, 56), a second curved section 36, wherein the first region additionally has a portion 48 pointing away in the direction of the second portion which functions as a retaining clip, thus reading on the appellant's retaining region. The device can be fixed to a cutlery basket. The device can be considered substantially non-rotating.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-13, 15-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Kauffman in view of Patera. Kauffman teaches a clip attached to a vertical part of a basket, but does not teach an interrupted clip that can be attached to a horizontal portion of the basket. Patera teaches a clip that can be attached to a horizontal portion and has an interrupted second portion. This device performs the same function of fixing. It would have been obvious at the time of invention to modify Kauffman and further include a horizontal clip with an interrupted second portion, as taught by Patera, in order to fix articles. Additionally, such a modification would read on claim 15. Figure 3 of Patera shows how the curved portion extends through the wall of the basket. Thus,

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with proper orientation, such a vertical post of the basket (or Kauffman's vertical post) could extend into the interrupted portion. This merely depends on the location of the clip within the basket. The end region of Patera is solid. In regards to claims 21, the retaining region is ambiguous. Any part of the clip 10 of Patera, such as biased member 40, can read on the retaining region, as it can be considered to protrude from the first section and be located between the first section and the second section. Both Patera and Kauffman teach elastic deformability.

(10) Response to Argument

In regards to Kauffman, appellant argues that the device is not disclosed as being coupled to an element of the crockery basket because it is fixed to an element of the crockery basket. Thus, it appears as if the appellant is arguing that the device is removable, but the claims do not limit the device as being so. As far as the examiner is considered, "coupled" and "fixed" are synonyms. Furthermore, the device of Kauffman is not disclosed as being rotatable, and if it is fixed with welding it would be substantially non-rotating. Furthermore, one of ordinary skill possesses the abilities to make fixed elements removable and removable elements fixed. The variety of art presented exemplifies these features.

In regards to Pille, section 48 points away from the vertical basket element 34 in a direction of the second section 46 embodied as a retaining clip. The device is disclosed as frictionally engaging tine 34, and is therefore found to be substantially non-rotating. The examiner does not agree that Pille's device is inherently a rotating device. Pille makes no mention of rotation. Furthermore, if the snap fit coupling mechanism is

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snug, rotation would not occur, and could be considered "substantially non-rotating".

Furthermore, if the device were rotating, then the cups would jostle around within the machine, which would not be advantageous. Thus, the appellant's arguments are not persuasive.

In regards to the combination of Kauffman in view of Patera, Kauffman discloses coupling to a vertical element while Patera discloses coupling to a horizontal element with the interrupted portion of the instant application. Combining these elements would be obvious to one of ordinary skill and would provide the interrupted portion along with horizontal and vertical attachment (claims 11 and 12). The appellant merely argues that there is no reason to combine said devices. Examiner disagrees. Both devices teach means for fixing an article holder to a rack, and these means are not mutually exclusive. One of ordinary skill would see an obvious benefit of including more than one fixing means in order to create a more stable hold on the rack. Patera teaches the interrupted second portion that is entirely capable of having a vertical most inserted therebetween. This only involves the location of the holder in the rack. The examiner maintains that the upper portion of Patera's clip is solid. Modifying Kauffman to include an interrupted portion is not found to inhibit the function of Kauffman as argued.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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/Jason Heckert/

Examiner, Art Unit 1711

Conferees:

/Michael Barr/

Supervisory Patent Examiner, Art Unit 1711

/Christine Tierney/

Supervisory Patent Examiner, Art Unit 1700